Ohio Rail Development Commission

50 West Broad Street, Suite 1510, Columbus, Ohio 43215
614-644-0306 (telephone) • 614-728-4520 (fax) • www.dot.state.oh.us/ohiorail

July 2, 2009

Dear Commissioners:

Enclosed please find relevant information to the **Thursday, July 9, 2009** Commission meeting. Minutes of the May 21st commission meeting will be sent to you via e-mail next week.

The meeting will be held in the Vern Riffe Center, 31st floor, **South B&C** beginning at 10:00 a.m. If you haven't already done so, please contact Wende Jourdan to confirm your attendance. You may reach her at 614/728-9497 (telephone) or by e-mail at wende.jourdan@dot.state.oh.us.

We look forward to seeing you.

Sincerely,

Thomas B. McOwen
Acting Chair

enclosures

THE OHIO RAIL DEVELOPMENT COMMISSION

MEETING AGENDA

Thursday, July 9, 2009, 10:00 a.m.

Vern Riffe Center for Government & the Arts

77 South High Street, 31st floor, South B&C, Columbus, Ohio

CALL TO ORDER: Tom McOwen, Vice-Chair

- Welcome
- Roll Call
- Approval of Minutes from May Meeting

EXECUTIVE DIRECTOR REPORT: Matt Dietrich

- 3-C Update

FINANCE REPORT: Megan McClory

ITEMS FOR APPROVAL

- Resolution 09-16: LWR Ohi-Rail First Right of Refusal Amendment

APPROVED PROJECT BRIEFING

- New Horizons Baking Company – Loan

PANHANDLE LONG TERM LEASE COMMITTEE REPORT

Commissioner Tom McOwen, Committee Chairman

REPORTS OF STANDING COMMITTEES: Committee Chairs

OLD BUSINESS

NEW BUSINESS

PUBLIC COMMENT

EXECUTIVE SESSION

- Columbiana County Port Authority Loan

ADJOURN

TO: ORDC Commissioners
FROM: Matthew Dietrich
SUBJECT: July 2009 Executive Director's Report

This document reflects the accomplishments and highlights of the Ohio Rail Development Commission since the May Commission Meeting.

ORDC Budget: At the time of this report, the State of Ohio is currently operating under an interim budget (1 week) as the conference committee continues its deliberations on the Main Operating Budget (HB-1). Secretary-Treasurer McClory has been working closely with OBM and ODOT Finance to ensure that we have sufficient funding for payroll and for urgent items that directly impact health and safety for the interim period. We have concluded that the provided funding level is sufficient for our minimum costs and we are hopeful that an agreement will be reached shortly so that we can move forward with planning our activities and project funding for the rest of the fiscal year. Fortunately, our safety funds and loan funds were passed in the Transportation Bill that was approved in April so we can be responsive in those areas. At the current time, ORDC staff has still been meeting on potential projects but has not been issuing any funding commitment letters until this issue is resolved. Additionally, ORDC staff has reached out to all the members of the budget conference committee and to our own legislative members of the Commission, and several have expressed support for ORDC and our programs.

Commission Membership: I have been in contact with the Governor's Office of Boards and Commissions. The search is continuing for both a new Chair as well as the new manufacturing representative on the Commission that was part of the Transportation Bill. The Office of Boards and Commissions hopes to have candidates for these positions in the very near future.

Dennison Depot Polar Express: I am extremely happy to report that the Dennison Depot and the Ohio Central Railroad have reached agreement on the operations of the Polar Express Train this year. ORDC staff is currently reviewing the proposal which is very similar to the 2008 proposal that received Commission approval. Given that agreement has been reached between the parties without the involvement of the Commission, ORDC staff involvement is limited to review for compliance with the current operating agreement. Upon completion of the review, staff intent is to approve the agreement so the project can move forward.

Federal Stimulus Funds for Rail:
FHWA Funds: I am happy to report that 11 of the projects selected for ARRA formula funding have been obligated. These projects include:

City of Medina; Medina Owned Line Rehabilitation - $950,000
Wheeling & Lake Erie Rail Akron/Canton Track Rehabilitation - $1,200,000
Camp Chase Railroad Bridge over West Broad Rehabilitation - $300,000
West Central Ohio Port Authority; Track Rehabilitation - $1,000,000
City of Jackson Rail Line Rehabilitation - $2,000,000
Cleveland Commercial Railroad, LLC - $67,000
RJ Corman Western Ohio Line Rehabilitation - $1,300,000
City of Orrville to City of Smithville Light and Gate Upgrades - $850,000

Licking County State Route 79 rail crossing resurface - $100,000
Minerva – Warning Device Improvement - $250,000
Delphos Warning Device Improvements (five locations) - $778,600

Projects still in process for approval:
State-owned Panhandle Line - $7,000,000
NS Airline Intermodal (City of Toledo) - $6,500,000
NS Doublestack Clearance (Cincinnati – Columbus) - $3,600,000
CSX Double Stack Clearance - $20,000,000
North Ridgeville – Safety Upgrades for Quiet Zone - $800,000
WLE Hartville – Safety Upgrades - $600,000
Macedonia-Twinsburg Road Warning Device Upgrade - $168,323
Railroad Safety Upgrades Montgomery/Warren - $1,000,000
Signal Preemption - $2,500,000
City of Youngstown V&M Steel Expansion - $20,000,000

Additionally, as part of ODOT's original announcement of the projects to be advanced with ARRA funds, the department targeted $57 million for necessary planning and design work to advance some of the state's most transformational regional long-term projects. This included $7 million for the Programmatic Environmental Impact Statement for four (4) corridors, 3-C, Toledo- Cleveland, Toledo-Columbus and Cleveland- Pittsburgh. ORDC and ODOT have already been working to identify other formula funds that could be used for this study. ODOT is committed to this effort and I think that our continued support of ODOT's work to identify other eligible funding is the best course of action to keep this project moving. While all the details have not been worked out yet on this project, ODOT has had success reallocating eligible formula funds for other planning projects and working to do the same with this project.

Megan McClory and Lou Jannazo have done an outstanding job on this effort.

Passenger Rail: There has been an incredible amount of activity on passenger rail since May. The Federal Railroad Administration (FRA) issued interim guidance on June 16th. ORDC and ODOT have formed a TIGER Team, a mechanism that ODOT employed for the FHWA stimulus funds, to address all of the issues associated with an Ohio application for the passenger rail funding. Don Damron is the ORDC lead and Leonard Evans is the ODOT lead for this effort. This group meets on a daily basis and the current work is focused on the Pre-application required by the FRA that is due on July 10th. On June 1st, a contingent from Ohio including ODOT, ORDC and various representatives from Ohio cities, companies, MPO's and other interested parties attended the regional meeting sponsored by the FRA. Staff also has continued to attend various meetings up and down the corridor, meeting with interested parties on potential station sites.

State Rail Plan: Wilbur Smith and Associates was picked as the vendor for the State Rail Plan. Commissioner Bennett, ORDC and ODOT Staff will be having the kick-off meeting next week.

ACCOMPLISHMENTS REPORT
PLANNING AND PROJECT DEVELOPMENT
May 11 to July 2, 2009

PLANNER	DEVELOPMENT SPECIALISTS
Don Damron	**Lou Jannazo**
	Bev Lee

FIELD & TRACK INSPECTION

- Field inspection of Randall Secondary with the new operator, Cleveland Commercial RR.
- Field inspection of proposed new spur for Yenkin Majestic in East Columbus.
- Field inspection of possible 3C station sites in Delaware, Worthington (ODOT District 6 Garage), and downtown Columbus.

ADMINISTRATIVE

- Packed up offices at LeVeque. Unpacked at new home at ODOT.
- Helped prepare agendas and briefing packets for July, 2009 meeting including 2 project briefing.
- Continued updating contract and contract amendment tracking system to keep better account of various EPA and Taxations clearances and the contracting process.
- Developed grant agreements for projects approved at May meeting.
- Did grant agreement amendments to extend time for select projects and to reflect changes in scopes of work and termination dates.
- Did OEPA and Ohio Taxation background checks on various grant recipients.

TRAINING

- Lou attended ODOT training on requirements for reporting etc. for federal stimulus projects.

FREIGHT PROJECT DEVELOPMENT AND IMPLEMENTATION

New Project Development/Continued Project Development

- Evaluated and committed to New Horizons Bakery spur project in Norwalk.
- Investigated new spur projects in Brookpark, Youngstown, and Chillicothe.
- Investigated new project to expand a rail, truck, barge facility in Bellaire.
- Continued discussions with Van Wert County about using salvage proceeds from FRA funded Elgin to Glenmore line to do a branchline rehabilitation that helps get rail closer to a major Ohio Job Ready Site and which serves an existing grain elevator on the CFER.
- Continued working with City of Jackson on issues such as the tunnel repairs.

Diesel Emissions Reduction Grant (DERG) Program

- Revised and got ORDC – RR Grant Agreement for W&LE, RJC, and I&ORY executed.
- Revised grant agreement with Cleveland Works RR.
- Obtained from FHWA and ODOT waiver of competitive bidding for I&O auxiliary power unit project.
- Continued coordination with ODOT and ODOD on all projects.

Logistics & Distribution Program: No activity.

American Recovery & Reinvestment Act (ARRA) Stimulus Funding for Rail Projects

- Notified railroads of selection and gathered scopes of work for all selected projects.
- Coordinated with ODOT on getting the proper information for environmental reviews.
- Participated in countless meetings on the developing method in which ARRA projects will be administered with ODOT, FHWA, and others.

PASSENGER PLANNING

Ohio Hub

- Helped with consultant selection for 3C PEIS; participated in kick off meeting.
- Helped get out invitations for July 7 PEIS purpose and need kick off meeting; helped develop program for the meeting.
- Continued with various meetings and presentations on Ohio Hub plan.

Amtrak /3C Corridor Investigations

- Continued working with Woodside Consultant on capacity modeling issues. Met with Woodside on station stops for "straw man" schedule.
- Continued coordination meeting with Amtrak especially on "straw man" schedule issues.
- Continued work on station locations getting more details on proposed sites. Conducted meeting in Middletown, Hamilton, Springfield, Dayton, Riverside, and Delaware. Talked on phone with officials from other 3C cities.
- Developed four, draft iterations of Pre-Application to FRA for 100% stimulus funding for 3C conventional speed service.
- Coordinated with ODOT on daily 3C progress meetings.

Other Passenger Initiatives

- Continued coordination with the MWRRI study effort.
- Continued supporting local efforts to develop passenger service, particularly in west Cleveland.
- Kept abreast of passenger issues in across Ohio and nationally through participation in the States for Passenger Rail.

OTHER PLANNING INITIATIVES

Panhandle Lease Sub-Committee: No activity
Sharonville Freight Movement Issue: Participated in meeting with Sharonville, OKI, Hamilton County, and NS on proposal to reactivate out of service NS line in Sharonville and restructure Sharonville Yard to reduce crossing congestion in Sharonville.

MISCELLANEOUS

- ***SCORT:*** Participated in various state surveys from SCORT.
- ***Liability Task Force:*** No activity.
- ***Glass Rock Branch:*** Continued helping with oversight of Z&W efforts to get excursion services going on ORDC owned line.

SAFETY

- No activity.

WPDOCS/AccomplishmentsCommission

OHIO RAIL DEVELOPMENT COMMISSION
INTER-OFFICE COMMUNICATION

TO: **Matthew Dietrich, Executive Director**

FROM: **Susan J. Kirkland, Manager, Grade Crossing Safety Section**

SUBJECT: **Safety Section Progress Report**

DATE: **July 2, 2009**

The following major objectives were met by the Safety Section during the last two (2) months:

- Safety Section, along with the rest of the ORDC, moved from the Leveque Tower to the ODOT Hilltop location at 1980 West Broad Street, Second Floor. During the move the Safety Section attempted to continue normal operations. Some disruptions were experienced but operations are returning to normal.

- The development by CTC Technologies, of the new statewide preemption standard nears is near completion with edits requested by ODOT Traffic being incorporated into the draft. However, we are finding that current projects are being identified as needing corrective action in regard to preemption simultaneously with the development of the standard. This increases the complexity of some existing projects, but reduces cost and increases safety by addressing preemption issues as projects progress rather than taking corrective measures at a later date.

- The Safety Section authorized PUCO to select another round of priority pick crossings for the new fiscal year. Diagnostic reviews will be scheduled for July.
  1. 228800V, Wood, CSX, W Millgrove, Rank 53, XB, 32 trains, 1 accident
  2. 503073B, Wayne, NS, Willow Rd, Rank 55, XB, 22 trains, 1 accident
  3. 513297B, Union, CSX, Adams Rd, Rank 92, XB, 22 trains, 1 accident
  4. 155272S, Auglaize, CSX, Short Rd, Rank 103, XB, 20 trains, 1 accident
  5. 473890T, Lucas, NS, Genesee St, Rank 118, XB, 8 trains, 2 accidents
  6. 152421F, Butler, CSX, S First St, Rank 141, FL, 26 trains, 1 accident
  7. 473551N, Medina, WE, White Rd, Rank 191, XB, 8 trains, 1 accident
  8. 532738X, Allen, CFE, Defiance Trail, Rank 192, XB, 8 trains, 1 accident
  9. 513424A, Perry, NS, Adams St, Rank 201, XB, 6 trains, 1 accident
  10. 525264X, Hamilton, INOH, Hunt Rd, Rank 213, XB, 2 trains, 1 accident
  11. 510745W, Tuscarawas, CUOH, Pleasant Valley Rd, Rank 214, XB, 5 trains, 1 accident .
  12. 473563H, Medina, WE, Congress Rd, Rank 216, XB, 5 trains, 1 accident

- The nine rail safety projects approved for funding through the American Recovery and Reinvestment Act (ARRA) are progressing with agreements and PUCO Orders:

PROJECT	RR	Amount	Agreement Status	PUCO Order Date Due	Constr. Auth.
Summit County, City of Macedonia	NS	$168,323	Pending		
Columbiana County, Village of Minerva	Ohi-Rail	$250,000	Executed	PE 9/22/09 Cons 9/29/09	
Southgate Industrial Park, Surface Reconstruction, LIC SR79	Col & Ohio RR	$100,000	Executed		6/1/2009
Van Wert/Allen County, City of Delphos	CF&E	$778,600	Executed		
Lorain County, City of North Ridgeville	NS	$800,000			
NS Railroad Grade Crossing Safety Upgrades Montgomery and Warren Counties	NS	$1,000,000			
Statewide Railroad Crossing Preemption Project	Various	$2,500,000			
Stark County, City of Hartville and Surrounding Area	W&LE	600,000	Executed		
Wayne County, Smithville to Orrville	W&LE	850000	Executed	P&E 9/15/09 Cons 6/17/10	

- The ORDC $5,000,000 commitment to the Wood County, CSX North Baltimore Intermodal Facility continues to move forward. An amended Letter Agreement allowing for a grade separation at Liberty Hi Road, AAR# 142 278V and the closure of TR135, Hough Road, AAR# 142 277N has been accepted by CSX and funds have been encumbered.

- The closeout of FY 2009: The Safety Section is calculating the closeout for FY 2009 and figures will be available for the next Commission meeting.

MEMORANDUM
July 2, 2009

TO: ORDC Commissioners
FROM: Megan McClory
SUBJECT: Finance Report

Accomplishments and Highlights of the Finance Section from May 13, 2009 to July 2, 2009:

1. **Financial Statements.** Staff will provide statements to reflect current outstanding loans, revenue collection, and project balances.

2. **ORDC Offices.** We moved! We successfully moved to the ODOT Headquarters building at 1980 West Broad Street over the weekend of June 20-21. A lot of unpacking remains, however we are slowly making ourselves at home.

3. **FY 2009 Budget.** The 2009 Budget closed on June 30, 2009. A final report on projects and spending is forthcoming.

4. **FY 2010/2011 Budget.** An interim budget is in place for the period of July 1 through July 7. Discussions between the Governor and the General Assembly are continuing.

5. **ARRA Projects.** ORDC has been working with colleagues at ODOT and the Ohio Division of the Federal Highway Administration to administer the approximately $77 million of Ohio's ARRA funds for rail-related projects.

6. **Passenger Rail Expert RFP.** ORDC issued a Request for Proposals from individuals or firms interested in providing expert advice to ORDC in regards to passenger rail planning and implementation. We received nearly a dozen proposals and made a selection. We continue working with the Division of Transportation System Development at ODOT to identify funding.

7. **ORDC Staffing Updates.** Intermittent Position: We created an "intermittent" position to provide assistance with ongoing safety and federal stimulus project activities. Tom Burns, our previous Safety Section intern and recent OSU Law graduate, is filling this position and providing valuable assistance.

POLICY ISSUE BRIEFING
CHANGE IN STATE OF OHIO RIGHT OF FIRST REFUSAL AGREEMENT FOR LWR (OHI-RAIL) OWNED MINERVA YARD & MINERVA TO BAYARD TRACKAGE AND PROPERTY

July 1, 2009

Overview:

The State owns the 40 mile long Piney Fork line from Minerva to Hopedale. Ohi-Rail has been the State's contract operator for the Piney Fork since the State bought it in 1984. LWR Inc., the parent company for Ohi-Rail Corporation, owns Minerva Yard and the line from Minerva to Bayard. LWR bought this yard and the line to Bayard in 1994 from Conrail for $75,000. At the time, this LWR yard and line was the only realistic outlet for Piney Fork traffic to interchange with other railroads. Currently, the Columbus & Ohio River Railroad/Panhandle Line connects to the Piney Fork at Carman/Pan.

On July 29, 1994, the Ohio Department of Transportation (ODOT) entered into a First Right of Refusal Agreement with LWR to protect State's access to its Piney Fork property. LWR has found that the First Right of Refusal Agreement has limited its ability to borrow funds and to invest in the Minerva Yard and Bayard line property and requested changes in the 1994 Agreement.

Maps of the Piney Fork and LWR properties are included as Exhibits "A" and "B". The 1994 Agreement is included herein as Exhibit "C"; the proposed amendment to this 1994 Agreement is included as Exhibit "D".

Staff recommends that ORDC Commissioners empower the Executive Director to execute the proposed Amendment to the 1994 Agreement included herein as Exhibit "D".

Discussion:

LWR/Ohi-Rail Reluctance to invest in its Minerva/Bayard Properties: In the 1994 Agreement, in Article 2, ORDC has the right to purchase the LWR/Ohi-Rail property for $75,000 in the event that LWR accepts any third party offer to purchase the property. In Article 7 of that Agreement, in the event that Ohi-Rail is no longer the State's Contract Operator for any reason, including ORDC terminating the operating agreement, ORDC has the right to either buy the LWR/Ohi-Rail property for $75,000, or acquire trackage rights over the property for no more than a $10 per car charge. When LWR purchased the Minerva & Bayard property in 1994, the $75,000 price was considered to by a bargain. Clearly, a $75,000 purchase of this property in 2009 would be even more of a bargain.

LWR/Ohi-Rail has stated that the Article 2 and Article 7 provisions in the current Agreement are onerous because they prevent business investment. LWR/Ohi-Rail states that: 1) local banks, always mindful of collateral issues, are reluctant to loan funds because they fear that LWR could be forcibly bought out by ORDC for the very low $75,000 price; 2) the owners of LWR will not invest personal funds in long term projects on the property because the possibility of a low cost ORDC buy out would limit their opportunity for financial gains from selling their property after it is further developed; and 3) other businesses which might want to transload or conduct other business on the property will not invest knowing that ORDC has the ability to buy out the property at a bargain price.

Article 2 Proposed Changes: The proposed amendment keeps ORDC's right to purchase the LWR/Ohi-Rail property for $75,000 in the event that Ohi-Rail ceases using it or files to abandon it. In the event that there is an offer to purchase the LWR/Ohi-Rail property, however, ORDC would not have an automatic right to step in and purchase the property itself for $75,000. Rather, if the new owner agreed to enter into a first right of refusal agreement that mirrors the proposed amended Agreement, then ORDC would have to match the price of the third party to exercise ORDC's first right of refusal to acquire the property instead of acquiring it for $75,000.

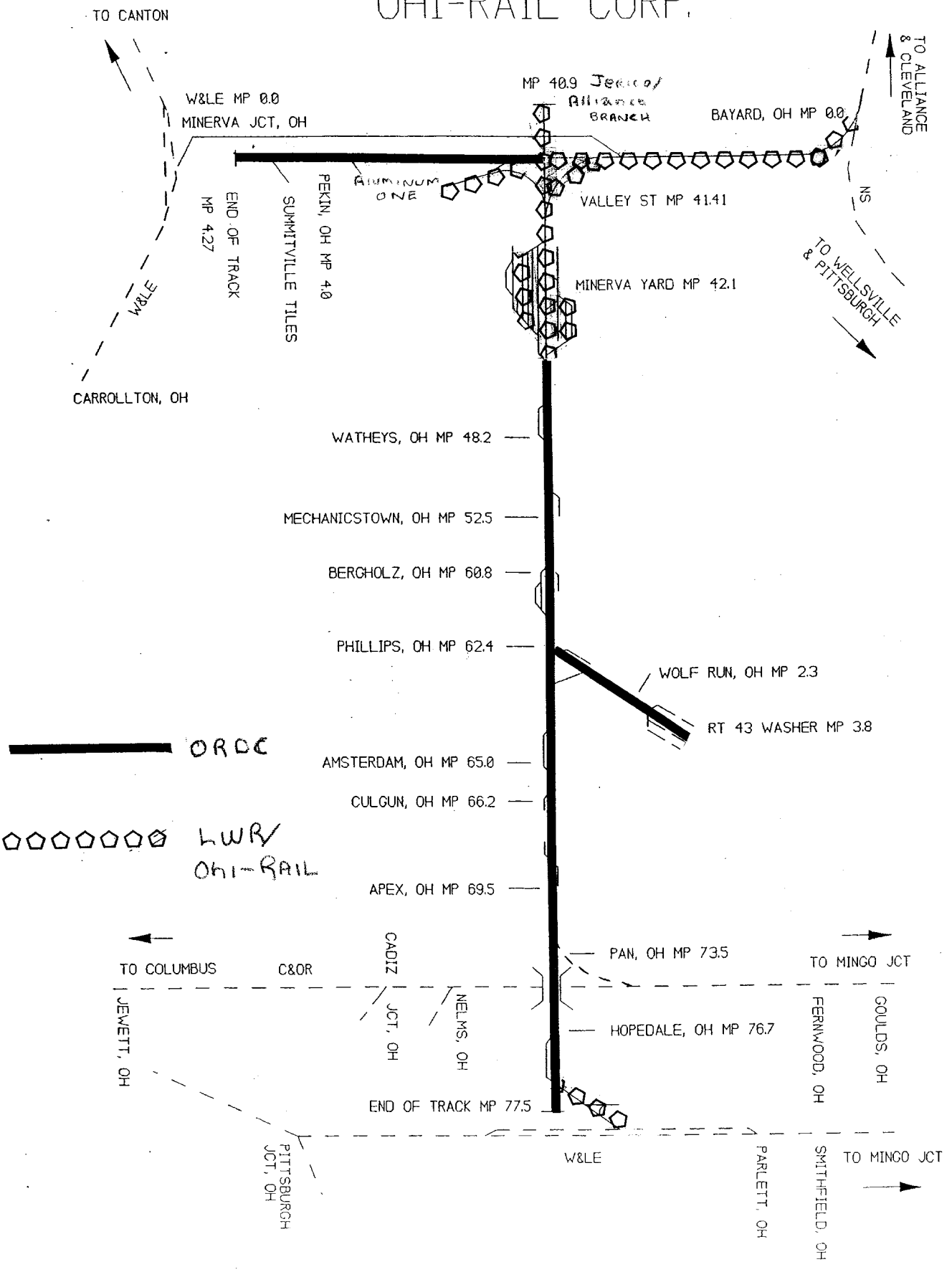
Article 7 Proposed Changes: ORDC would maintain its right to acquire trackage rights for a low cost over the LWR/Ohi-Rail property. Loaded cars would move for no more than $2.50 a mile. For a move between the *Piney Fork at the south* end of Minerva Yard and the Norfolk Southern interchange at Bayard, a distance of 5.3 miles, the maximum charge would be about $13.25 per car. For traffic moving between the Wheeling & Lake Erie Railway (W&LE) and the Piney Fork, a distance of 2.7 miles, the maximum charge would be about $6.75 per car. For empty cars moving at 40 cents per mile, the maximum charges would be about $2.25 for the Bayard move and $1.10 for the W&LE move. The proposed amendment has provisions for escalation of the maximum rates in accordance with federally determined cost adjustment factors. The current agreement has no such escalation factor. Further, the proposed amendment has provisions for the railroad using the trackage rights to not only pay the trackage rights fee, but to also pay for capital improvements needed to facilitate the movement of foreign traffic.

Staff Recommendation:

LWR/Ohi-Rail has invested 15 years of sweat equity and company investments in its Minerva & Bayard properties. ORDC has helped LWR/Ohi-Rail in this regard with a $350,000 grant. ORDC Staff believes that the proposed changes are fair to LWR/Ohi-Rail, ORDC, and rail carriers which might be interested in obtaining trackage rights over LWR/Ohi-Rail to reach the Piney Fork. ORDC Staff believes that the current Agreement does prevent banks, the owners, and other investors from pursuing projects on the LWR/Ohi-Rail property that would positively impact the region. ORDC Staff agrees that the proposed new amendment will better serve the economic development interests of the region than the existing Agreement.

A

OHI-RAIL CORP.



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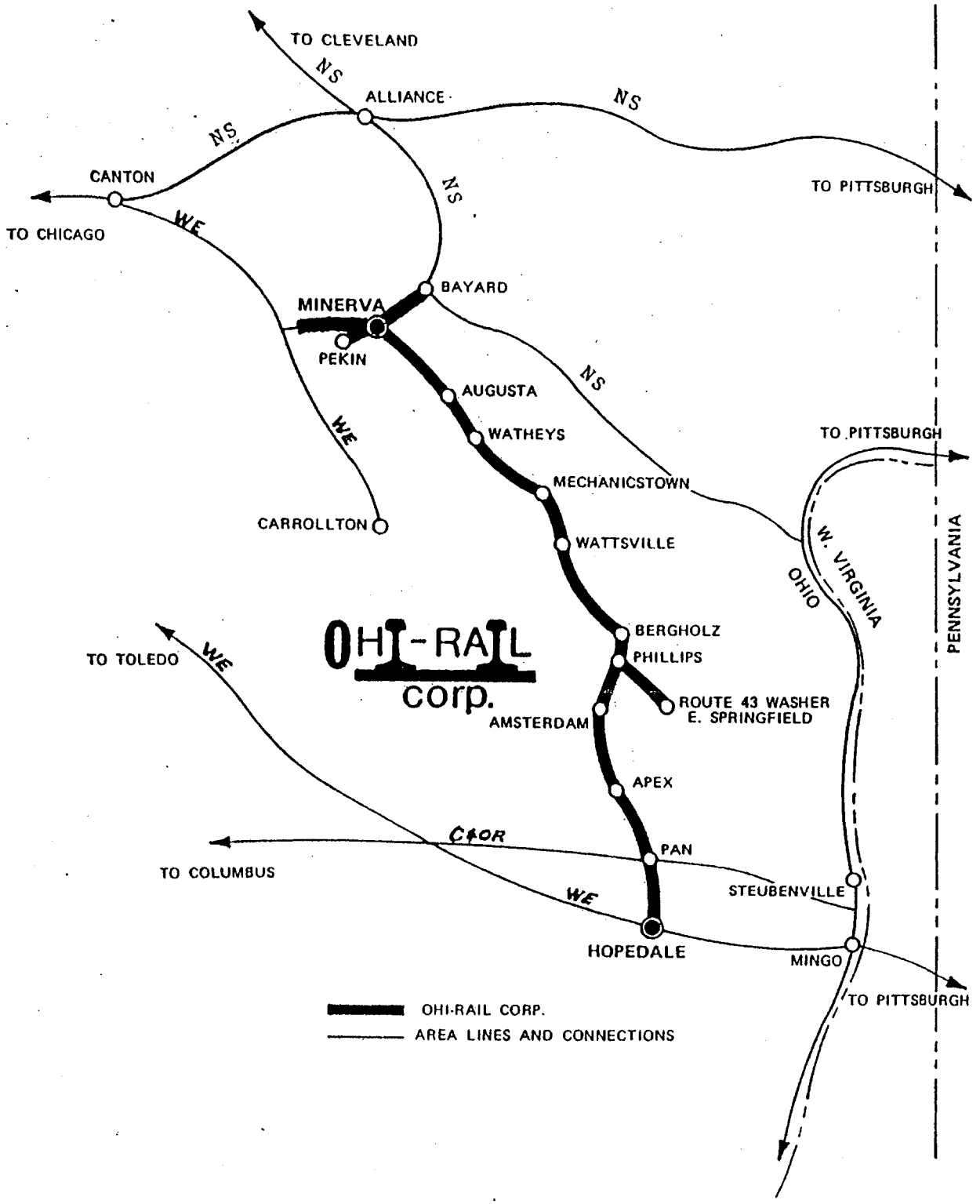

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Revisions:
5/17/90 (W&LE)
4/17/92 (C&OR)
11/08/93 (OHIC Bayard
6/01/99 (NS Merger)

C

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RECEIVED
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96 DEC 26 PM 4:09

Right of First Refusal And Access Agreement Between

State of Ohio, Department of Transportation and LWR, Incorporated

This AGREEMENT made this 29th day of July , 1994 by and between the STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "ODOT", with principal offices at 25 South Front Street, Columbus, Ohio 43216-0899; and the LWR, Incorporated, hereinafter referred to as "LWR", with principal offices at P.O. Box 85, Richmond, OH 43944.

WHEREAS, LWR is the owner of Ohi-Rail Corporation (hereinafter referred to as OHIC) which is the contract operator on the State of Ohio owned Minerva to Hopedale, Ohio rail line (hereinafter referred to as the PINEY FORK RAIL LINE); and

WHEREAS, LWR has agreed to provide ODOT the Right of First Refusal to purchase the PROPERTY; and

WHEREAS, ODOT agreed to provide LWR the "Right of First Refusal" to purchase the state owned PINEY FORK RAIL LINE; and

INDEXED ☐ RANGED ☐
COMPARED ☑ MGN. ENTRY ☑

9700002312 Mail
Filed for Record in
CARROLL COUNTY, OHIO
PATRICIA OYER
On 05-13-1997 At 02:31 pm.
DEED 36.00
Vol. 278 Pg. 370 - 376

Transfer NOT Necessary
E. Leroy Van Horne
Carroll County Auditor

ENTERED OF RECORD
DATE MAY 13 1997
BY DEPUTY Cheryl Hall

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WHEREAS, LWR purchased the Minerva to Bayard rail property for OHIC rail operations, this rail property extending from Milepost 0.0 at Bayard to Milepost 2.7 at Minerva and Milepost 40.9 to Milepost 43.5, (hereinafter referred to as the PROPERTY); and

WHEREAS, the PROPERTY provides the only connection to the mainline railroad system for the PINEY FORK RAIL LINE; and

WHEREAS, LWR has agreed to provide ODOT with the Right of First Refusal to purchase the PROPERTY; and

WHEREAS, ODOT and LWR desire to enter into this "Right of First Refusal and Access Agreement"; and

WHEREAS, OHIC and ODOT are cooperating to preserve and develop existing rail infrastructure in eastern Ohio;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

ARTICLE 1 - DESCRIPTION OF PROPERTY SUBJECT TO RIGHT OF FIRST REFUSAL AND ACCESS AGREEMENT

ODOT requests that LWR grant a Right of First Refusal on the rail property identified as Line Code 2427 in the Recorder's Office of Columbiana County, Ohio Volume 1481 #133723, page 509 and 515. The property is located at Bayard, M.P. 0.0 to M.P. 1.45. The property may also be identified in the Recorder's Office of Stark

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County, Ohio in Volume 4183 on page 909 at M.P. 1.45 to M.P. 2.51. The Piney Fork and Tuscarawas Industrial Tracks can be identified as Line Code 2427 and 2446 in the Recorder's Office of Carroll County, Ohio, in Volume 198 on page 502 and 512, located between M.P. 2.51 to M.P. 2.9 and M.P. 40.9 and 43.5 which includes the Horn Track and Minerva Yard property all situated within Carroll county.

ARTICLE 2 - ODOT RIGHT OF FIRST REFUSAL

In the event OHIC ceases service on PROPERTY, and OHIC files to abandon the PROPERTY, or receives any bonafide offer from any third party to purchase the PROPERTY and LWR desires to accept the offer, ODOT shall have the first right to purchase the PROPERTY. The cost to purchase the PROPERTY shall be the lower of the NLV of the PROPERTY or SEVENTY-FIVE THOUSAND DOLLARS and No Cents ($75,000.00).

Within (30) days after the date of the cessation of service by OHIC on the PROPERTY or the date of the filing of an abandonment of the PROPERTY by OHIC, or immediately after the receipt by LWR of any bonafide offer from any third party to purchase the property which LWR desires to accept, LWR will provide ODOT with written notice of the cessation of service by the OHIC, the filing of an abandonment by the OHIC, or the receipt of a bonafide offer of purchase by the LWR for the PROPERTY which LWR desires to accept. ODOT shall have 30 days after the date of the receipt of the written notice from the LWR to exercise its right to purchase the

property. ODOT's right under this AGREEMENT shall be referred to as the "Right of First Refusal".

ODOT shall exercise the Right of First Refusal, if at all, by providing LWR written notice within the 30 days after the receipt of written notice from LWR, that OHIC has ceased service on the PROPERTY, that OHIC has filed an abandonment of the PROPERTY, or that LWR has received a bonafide offer of purchase from a third party for the purchase of the PROPERTY which LWR desires to accept. IF ODOT timely exercises the Right of First Refusal, the closing shall be held in Columbus, Ohio within 180 days after the receipt by LWR of ODOT's written notice to exercise its right to purchase the PROPERTY.

LWR shall inform any and all third parties which have made an offer to purchase the PROPERTY of ODOT's Right Of First Refusal to purchase the PROPERTY.

ARTICLE 3 - APPRAISAL

LWR and ODOT agree that the Net Liquidation Value (NLV) of the PROPERTY shall be determined by a M.A.I. appraiser mutually agreed upon by ODOT and LWR in writing.

ARTICLE 4 - NOTICE

Any notice required by this AGREEMENT or given in connection herewith shall be in writing and made by personal delivery or First Class Mail, postage prepaid, to the following representatives of the parties:

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Mr. Michael Carapellotti
President
LWR, Inc.
P.O. Box 85
Richmond, OH 43944

Director
The Ohio Department of
Division of Rail
25 South Front Street
Columbus, Ohio 43215-0899

ARTICLE 5 - RECORDATION OF AGREEMENT

LWR shall file this AGREEMENT in the Recorder's Office of the county where the real property is located within thirty (30) days of the execution of this AGREEMENT by both LWR and ODOT. LWR shall furnish ODOT an original of the recorded document within fifteen (15) days of filling the AGREEMENT with the Recorder's Office.

ARTICLE 6 - COVENANTS RUNNING WITH THE LAND; SUCCESSORS

The covenants and agreements contained in this AGREEMENT shall be deemed covenants running with the land and shall inure to the benefit of and be binding upon LWR and ODOT, and their respective heirs, personal representatives, successors and assigns.

ARTICLE 7 - CONTINUED ACCESS TO MINERVA INTERCHANGES

If OHIC for any reason ceases to operate the state owned PINEY FORK RAIL LINE, LWR shall agree to one of the following two options: 1) to provide trackage rights to the new rail carrier selected by ODOT over the PROPERTY, at a price mutually agreed upon by ODOT, the new rail carrier of the PINEY FORK RAIL LINE, and LWR, but not to exceed $10 per car; or 2) to sell PROPERTY to ODOT for the lower of NLV or $75,000 as stated in Article 1 above.

The purpose of this Article is to ensure that any rail operation on the Piney Fork rail line will have available access to enter and exit the PROPERTY and thus be able to interchange with Conrail and continue rail operations on the PINEY FORK RAIL LINE.

IN WITNESS WHEREOF, the parties hereto have cause this AGREEMENT to be executed as of the day and year first above written.

SIGNED AND ACKNOWLEDGED

IN THE PRESENCE OF:

T. D. Barnett

TITLE: PRESIDENT - VICE

OHI-RAIL CORPORATION

Michael Pasapelotto

TITLE: Treasurer

TITLE: _____

STATE OF OHIO

COUNTY OF JEFFERSON SS.

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The foregoing instrument was acknowledged before me this 30th day of June 1994, by Tom D. Barnett A/K/A T. D. Barnett of Ohi Rail Corporation a Ohio corporation, on behalf of the corporation.

James D. Hobson

NOTARY PUBLIC

JAMES D. HOBSON, Notary Public
State of Ohio
My Commission Expires 10-5-94

STATE OF OHIO

DEPARTMENT OF TRANSPORTATION

Jeff G. Honefanger

TITLE: Deputy Director
Division of Rail

JERRY WRAY

TITLE: DIRECTOR OF TRANSPORTATION

STATE OF OHIO SS.

COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 29th day of July, 1994 by Jerry Wray, Director of the Ohio Department of Transportation.

Karen Jackson Krouse

NOTARY PUBLIC

KAREN JACKSON KROUSE
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES APRIL 26, 1996

a:ROFOHI1A

STATE OF OHIO SS.

COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this 3rd day of October, 1994 by Jeff G. Honefanger, Deputy Director, Division of Rail, Ohio Department of Transportation.

Wanda F. Large

NOTARY PUBLIC

Wanda F. Large
Notary Public, State of Ohio
My Commission Expires August 29, 1999

Prepared By
Bev Lee

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FIRST AMENDMENT TO RIGHT OF FIRST REFUSAL AND ACCESS AGREEMENT

THIS FIRST AMENDMENT TO THE RIGHT OF FIRST REFUSAL AND ACCESS AGREEMENT (the "First Amendment") is made and entered by and between the **State of Ohio, Ohio Rail Development Commission** (the "ORDC"), and the **LWR, Inc.** ("LWR"). This First Amendment shall have Control Number 2009-__.

BACKGROUND INFORMATION

A. The Ohio Department of Transportation ("ODOT") and LWR entered into a Right of First Refusal and Access Agreement last dated July 29, ~~2004~~ 1994 (the "Agreement").

B. Pursuant to ORC 4981.03(B), the ORDC is the successor to ODOT for purposes of the Agreement.

C. The ORDC and LWR desire to modify certain provisions of the Agreement as provided herein.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, ORDC and LWR agree as follows:

1. The first paragraph of Article 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

> "In the event that OHIC, or its successors or assigns, ceases all local service on the PROPERTY, and ceases its own overhead service on the PROPERTY, for a continuous period of one year, or, in the event OHIC, or its successors or assigns, files to abandon the PROPERTY, then ORDC shall have the right to purchase the PROPERTY for an amount not to exceed Seventy Five Thousand ($75,000).
>
> In the event that ORDC causes the PINEY FORK RAIL LINE to be abandoned and proceeds to salvage that line, then ORDC shall forfeit its right to purchase the PROPERTY and LWR shall have no legal obligations to the ORDC concerning the PROPERTY.

In the event that LWR, or its successor or assigns, receives a bona fide offer from an entity hereinafter referred to as the "Purchaser", to purchase the PROPERTY for continued rail operations which LWR desires to accept, then ORDC shall be provided the first right to purchase the PROPERTY for the same amount as the Purchaser's offer. If the Purchaser does not agree to be bound to all the terms and conditions of the AGREEMENT as amended, the price of the ORDC purchase shall be set in the amount of Seventy Five Thousand Dollars ($75,000)."

2. The notice address for ODOT set forth in the first paragraph and Article 4 of the Agreement is hereby deleted in its entirety and replaced with the following:

"Ohio Rail Development Commission, Suite 1510 LeVeque Tower, 50 West Broad Street, Columbus, Ohio 43215"

3. The first paragraph of Article 7 of the Agreement is hereby deleted in its entirety and replaced with the following:

"If OHIC, or its successor or assigns, for any reason ceases to operate the state owned PINEY FORK RAIL LINE, or if ORDC requests that LWR provide access to the PROPERTY to another railroad, hereinafter referred to as "FOREIGN RAILROAD", then LWR shall agree to provide trackage rights to enable the FOREIGN RAILROAD selected by ORDC to traverse the PROPERTY to and from the Minerva interchange with the Wheeling & Lake Erie Railway, or the successor or assigns of that railroad, and/or the Bayard interchange with the Norfolk Southern Railroad, or the successor or assigns of that railroad.

The cost of these overhead trackage rights shall be mutually agreed upon by ORDC, LWR, and the FOREIGN RAILROAD. In negotiating the trackage rights rate, the parties will consider the impact of said trackage rights on OHIC or LWR operations on the PROPERTY, the maintenance costs for the PROPERTY required for the traffic expected to be handled via the overhead trackage rights, and other economic considerations for the long term viability of the PROPERTY. Further, these negotiations will also consider the need of the FOREIGN RAILROAD to develop rail traffic as well as commerce and industry on the State owned property. The purpose of considering the items listed herein is to ensure that the provision of trackage rights by LWR does not impose an undue cost upon OHIC or LWR in their operations and development of the PROPERTY, nor create a cost barrier to the movement of commerce to and from the PINEY FORK RAIL LINE for the FOREIGN RAILROAD.

Under no circumstances shall the trackage rights rate established for the PROPERTY exceed $2.50 (Two Dollars and Fifty Cents) per loaded car or any locomotive, per mile of operations, and $00.40 (Forty Cents) per empty car, per mile of operations. These maximum trackage rights rates shall be adjusted

annually up or down in accordance with the Rail Cost Adjustment Factor, Unadjusted, published by the Association of American Railroads. The maximum trackage rights referenced in this Article 7 exclude capital expenditure cost that may be required of OHIC or LWR in order to accommodate a request by a FOREIGN RAILROAD to operate on the PROPERTY"

4. Except as modified herein, all terms, covenants and conditions contained in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this First Amendment to theAgreement as of the last date set forth below.

LWR, Inc.

By: Richard Delatore

Print Name: Richard Delatore

Title: Vice President of Ohi-Rail, Inc.

Date: 6/22/09

State of Ohio

Ohio Rail Development Commission

By: _____

Matthew R. Dietrich,

Executive Director

Date: _____

RESOLUTION 09-16

Re: Authorizing Ohio Rail Development Commission to enter into an amendment to the Right of First Refusal Agreement with LWR Inc. concerning the Piney Fork Rail Line

A RESOLUTION TO AUTHORIZE ORDC TO ENTER INTO AN AMENDMENT TO THE LWR INC. RIGHT OF FIRST REFUSAL AGREEMENT UNDER CHAPTER 4981 OF THE OHIO REVISED CODE.

WHEREAS, the Ohio Rail Development Commission ("ORDC") is authorized by ORC 4981, Sections .14 (9) and (18) to exercise all powers necessary or appropriate to carry out its corporate purposes including the authority to make and enter all agreements necessary to the performance of its duties and the execution of its powers; and

WHEREAS, ORDC has leased the Piney Fork Rail Line to the Ohi-Rail Corporation for the past 25 years; and

WHEREAS, On July 29, 1994, the Ohio Department of Transportation ("ODOT") entered into a First Right of Refusal Agreement with LWR, Inc., the parent company of the Ohi-Rail Corporation, to protect the State's access to its Piney Fork property.

WHEREAS, the ORDC, as successor in interest to ODOT, now desires to modify the terms of the First Right of Refusal Agreement.

NOW, THEREFORE, BE IT RESOLVED that the ORDC hereby authorizes its executive director, Matthew R. Dietrich, and staff to exercise all powers necessary or appropriate to enter into an amendment of the aforesaid First Right of Refusal Agreement with LWR Inc in a form substantially similar to the form attached hereto as Exhibit A and incorporated as if fully rewritten herein.

Moved By _____
Seconded By_____

Upon roll call, the vote resulted as follows:

Thomas McOwen, Vice-Chair	____	yes	_____	no	_____	absent	_____	abstained	____ recused
Jolene Molitoris	____	yes	_____	no	_____	absent	_____	abstained	____ recused
Barbara Hammontree Bennett	____	yes	_____	no	_____	absent	_____	abstained	____ recused
Robert Greenlese	____	yes	_____	no	_____	absent	_____	abstained	____ recused
William Murdock for Lisa Pat-McDaniel	____	yes	_____	no	_____	absent	_____	abstained	____ recused
Solomon Jackson	____	yes	_____	no	_____	absent	_____	abstained	____ recused
William Lozier	____	yes	_____	no	_____	absent	_____	abstained	____ recused
Larry Sowers	____	yes	_____	no	_____	absent	_____	abstained	____ recused
Herk Wolfe	____	yes	_____	no	_____	absent	_____	abstained	____ recused

ORDC ACTION: Motion approved _____ Other action _____
Motion denied_____ Date 7/9/2009

CERTIFICATE

I, the undersigned Vice-Chair of the ORDC, hereby certify that the foregoing is a true and correct record of the resolution of said ORDC.

_____ 7/9/2009
Thomas B. McOwen, Vice-Chair Date

EXHIBIT A

FIRST AMENDMENT TO RIGHT OF FIRST REFUSAL AND ACCESS AGREEMENT

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change address

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annually up or down in accordance with the Rail Cost Adjustment Factor, Unadjusted, published by the Association of American Railroads. The maximum trackage rights referenced in this Article 7 exclude capital expenditure cost that may be required of OHIC or LWR in order to accommodate a request by a FOREIGN RAILROAD to operate on the PROPERTY"

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LWR, Inc.

By: Richard Delatore

Print Name: Richard Delatore

Title: Vice President of Ohi-Rail, Inc.

Date: 6/22/09

State of Ohio

Ohio Rail Development Commission

By: _____

Matthew R. Dietrich,

Executive Director

Date: _____

APPROVED PROJECT BRIEFING
NEW HORIZONS BAKING COMPANY
July 1, 2009

Project Funding		**Project Benefits**
*** ORDC Loan up to**	**$50,000**	*** Retention of 110 jobs**
*** NHBC/Huron County**	**$72,853**	*** Generate 161 carloads**
*** ODOD ISIF Grant**	**$170,000**	

INTRODUCTION: New Horizons Baking Company (NHBC) requests a loan of $50,000 towards the estimated costs for a new rail spur to serve the company's Norwalk plant.

BACKGROUND: NHBC is located in Norwalk, Ohio in Huron County. It is one of the largest employers in the county, which had an unemployment rate in May of 15.4%. The company began operations in 1967 and was purchased by the current president in 1995. The company provides buns, muffins and other baked goods for McDonald's and for other food service and retail companies.

PROJECT DESCRIPTION: In cooperation with the Ohio Department of Development (ODOD) and Huron County, ORDC agreed to provide financial assistance towards the $291,412 estimated rail costs. The company presently uses tractor trailers and receives trucks of flour and wheat from mills in Kansas, Nebraska and Cleveland. Adding rail, the company will save $.75/cwt on flour alone. Therefore, rail service is essential to saving on fuel costs as well as the competitive costs to purchase flour while going "green." The estimated cost breakdown for the new rail construction is listed below:

Rail installation	$62,826
Switch	51,750
Blowers and pipes	80,000
Excavating	35,000
Electric	21,500
Pan Lift	5,000
Load Cells and panels	29,336
Concrete steps and sidewalk	6,000
Total estimated project costs	$291,412

A site plan of the new rail spur is attached as Exhibit A.

WHY ORDC FUNDING IS NEEDED: ORDC is providing "loan gap financing" to ensure this project will move forward.

OTHER CONTRIBUTIONS:

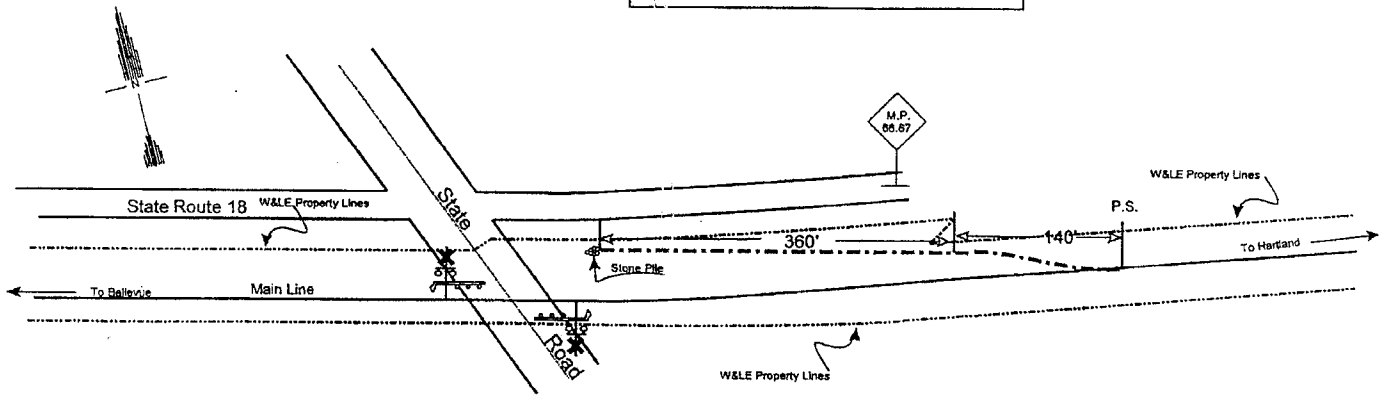
- ODOD is providing a $170,000 Industrial Site Improvement Funding Grant (ISIF).
- Huron County and NHBC will jointly contribute $72,853 toward the rail construction costs.

"EXHIBIT A"

New Industry Track for Norwalk Rail Spur Development Project

New Horizons Baking Co.

Norwalk, Ohio



New Industry Track for
New Horizons Baking
Scale: 1" = 100'

Attachment #4 – Site Improvement Plan

Ohio Rail Development Commission

50 West Broad Street, Suite 1510, Columbus, Ohio 43215
614-644-0306 (telephone) • 614-728-4520 (fax) • www.dot.state.oh.us/ohiorail

July 9, 2009

Pursuant to Ohio Rail Development Commission Resolution 99-15 "Spending and Signatory Guidelines," the undersigned hereby approves of the project described in the Approved Project Briefing entitled **New Horizons Baking Company** and dated July 1, 2009, as described in that briefing.

Matthew R. Dietrich
Executive Director

Thomas B. McOwen
Acting Chair